

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012051030

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On May 24, 2012, Student, through his parents, filed a Due Process Hearing Request¹ (complaint) naming the San Francisco Unified School District (District).

On June 8, 2012, the District timely filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student alleges that the District failed to provide him with a free appropriate public education (FAPE) during the 2011-2012 and 2012-2013 school years by failing to: a) offer an appropriate placement with aide support and appropriate behaviorist support; b) complete a functional behavior assessment; c) provide an appropriate behavior support plan (BSP); d) provide occupational therapy services, and e) have appropriate goals and objectives.

The District’s notice of insufficiency contends that issues (a), (d), and (e) of Student’s complaint are too vague and therefore do not meet the statutory requirements for sufficiency. With regard to issue (a), the District contends that Student has not indicated what is inappropriate about the classroom placement it offered to Student. However, Student specifically asserts in his complaint that his social functioning is decreasing, that he has become more uncooperative, and that he is not completing school and homework assignments. He also states that the District has not properly addressed his behavioral issues in the classroom. Student then states that he requires a full time aide in the classroom to be supervised by a behaviorist. It is clear that Student contends that his placement is not appropriate because the District has failed to address his behavioral issues and has failed to

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

provide him with aide support, which Student contends he requires in order to receive a FAPE. Issue (a) is therefore sufficient.

The District contends that issue (d) is too vague because Student does not define the occupational therapy services he needs or specify the exact amount of services he requires. However, Student's complaint does contend that he has sensory needs, writing deficits, and fine motor issues that he believes require direct occupational therapy services. Student's complaint is clear that he is not presently receiving any direct services at this time and that he believes he needs them. Although Student does not state the level of services he needs, that is an issue that he will have to prove during the due process hearing. Issue (d) is sufficient because the District has been put on notice that Student alleges that he needs a service he does not presently receive.

With regard to issue (e), the District contends that Student's complaint fails to specify which individualized educational programs (IEP's) are at issue and fails to identify the areas of need the goals should address. However, Student's complaint states that he feels all the goals for the 2011-2012 and 2012-2013 school years are inadequate. Therefore, the IEP's for those school years are the ones at issue. Students also states that all of his goals for the school years in question are not specific and are not measurable. It will be Student's burden at hearing to prove his contentions. Student has not contended that the goals as written did not address all of his unique needs; rather, he contends that the ones written for him are not specific enough and are not measurable. If it was Student's contention that he required additional goals, Student will need to file an amended complaint specifically alleging what areas of need were omitted from his present goals. For purposes of the complaint as presently written, Student's issue (e) is sufficient.

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: June 11, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings